

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

RICHARD JOE FITTEN)
)
Petitioner,)
v.) 1:08-cv-234/1:08-cv-205
) Chief Judge *Cutis L. Collier*
HAMILTON COUNTY CRIMINAL COURT,)
)
Respondent.)

MEMORANDUM

The court is in receipt of two *pro se* habeas petitions filed by Richard Joe Fitten (“Fitten”).

Fitten’s initial habeas petition was opened as Civil Action Number 1:08-cv-205. At that time, Fitten had failed to pay the \$350.00 filing fee or file a complete *in forma pauperis* application. In addition, Fitten had failed to identify the statutory authority under which he was filing his habeas petition. Since the Court was unable to determine whether Fitten was filing his habeas petition under 28 U.S.C. § 2241 or 28 U.S.C. § 2254, the Court directed him to identify the correct Respondent and the habeas statute he was relying upon to file his petition. In addition, the Court directed Fitten to pay the full filing fee or file a complete application to proceed *in forma pauperis*.

In partial compliance with the Court’s order, Fitten subsequently filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. However, rather than filing the document in his pending case, Civil Action Number 1:08-cv-205, as an amended petition, the § 2254 petition, which makes no reference to Fitten’s pending case, was opened as a new case, Civil Action Number 1:08-cv-234.

Pursuant to Fed. R. Civ. P. 42(a) the District Court is afforded discretion concerning the purposes and scope of consolidation. Therefore, pursuant to Fed. R. Civ. P. 42(a) these cases will be consolidated. All future filings in both of these actions, Civil Action Number 1:08-cv-205 and

Civil Action Number 1:08-cv-234, shall be filed in Civil Action Number 1:08-cv-205. To be perfectly clear, Fitten **SHALL** include Civil Action Number 1:08-cv-205 in the top right quadrant of the style of the case on each document he files with this Court.

The Clerk will be **DIRECTED** to **CONSOLIDATE** these cases, file this document in both cases, and send the parties involved in these cases copies of this order and all relevant documents.

Fitten is further **ORDERED** to inform the Court, and the defendants or their counsel of record, immediately of any address changes. Failure to provide a correct address to this Court within **ten (10) days** following any change of address will result in the dismissal of this action.

An appropriate order will enter.

/s/
CURTIS L. COLLIER
CHIEF UNITED STATES DISTRICT JUDGE